

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

**MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster**

This document relates to:

*The County of Cuyahoga v. Purdue
Pharma L.P., et al.*, Case No. 17-OP-45004

*The County of Summit, Ohio, et al. v.
Purdue Pharma L.P. et al.*,
Case No. 18-OP-45090

**DEFENDANTS' MOTION TO EXCLUDE MEREDITH
ROSENTHAL'S OPINIONS AND PROPOSED TESTIMONY**

Defendants¹ hereby move for an order granting Defendants' motion to exclude Meredith Rosenthal's expert opinions in their entirety under Federal Rule of Evidence 702 and *Daubert v.*

¹ In this motion and the accompanying memorandum, Defendants include Purdue Pharma, L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Johnson & Johnson; Noramco, Inc.; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Allergan plc f/k/a Actavis plc; Allergan Finance, LLC, f/k/a/ Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Watson Laboratories, Inc.; Warner Chilcott Company, LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc., f/k/a Watson Laboratories, Inc. - Salt Lake City; Actavis Laboratories FL, Inc., f/k/a Watson Laboratories, Inc. - Florida; Insys Therapeutics, Inc.; Mallinckrodt plc; Mallinckrodt LLC; SpecGx LLC; Amerisourcebergen Drug Corporation; Anda, Inc.; Cardinal Health, Inc.; CVS Indiana, LLC; CVS Rx Services, Inc.; Discount Drug Mart, Inc.; HBC Service Company; Henry Schein, Inc.; Henry Schein Medical Systems, Inc.; McKesson Corporation; Miami-Luken, Inc.; Prescription Supply, Inc.; Rite Aid Of Maryland, Inc.; d/b/a Rite-Aid Mid-Atlantic Customer Support Center, Inc.; Walgreen Co.; Walgreen Eastern Co.; and Walmart Inc. f/k/a Wal-Mart Stores, Inc. ("Defendants").

Teva Pharmaceutical Industries Ltd., Allergan plc f/k/a Actavis plc, and Mallinckrodt plc are respectively an Israeli corporation, Irish holding company, and Irish company that are not subject to and contest personal jurisdiction for the reasons explained in their pending motions to dismiss for lack of personal jurisdiction; they are specially appearing to join this motion as a result of the Court's deadline to file dispositive and Daubert motions, and, thus, they do not waive and expressly preserve their pending personal jurisdiction challenges.

In the Complaints, Plaintiffs lump Noramco together with J&J and its other affiliated entities, all Manufacturer Defendants, or all Defendants collectively. For this reason, Noramco joins this motion even though it never manufactured, packaged, branded, marketed, promoted, distributed or sold the finished drug products that are at issue

Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and its progeny. As described more fully in the accompanying memorandum, Rosenthal's opinions suffer serious methodological flaws that render them unreliable and irrelevant to a fact finder's evaluation of the issues. Accordingly, Rosenthal's opinions should be excluded in their entirety.

in this litigation. Indeed, because Noramco is an active pharmaceutical ingredient supplier, and not a finished drug product manufacturer, Plaintiffs' alleged injuries are even more remote and disconnected from the lawful activities of Noramco. *See* Noramco's Memorandum in Support of Motion for Judgment on the Pleadings Or, in the Alternative, Summary Judgment.

On June 10, 2019, Insys Therapeutics, Inc. and its affiliates each filed a voluntary case under chapter 11 of United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which cases are being jointly administered under Case No. 19-11292 (KG). In light of this bankruptcy proceeding, Insys does not join any of the Daubert motions for summary judgment motions to be filed in the MDL Track One cases.

Dated: June 28, 2019

Respectfully Submitted,

/s/ Mark S. Cheffo
Mark S. Cheffo
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
Tel: (212) 698-3500
Mark.Cheffo@dechert.com

*Counsel for Defendants Purdue Pharma L.P.,
Purdue Pharma Inc., and The Purdue Frederick
Company*

*Co-Liaison Counsel for the Manufacturer
Defendants*

/s/ Carole S. Rendon
Carole S. Rendon
BAKER & HOSTETLER LLP
Key Tower 127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Telephone: (216) 621- 0200
Fax: (216) 696-0740
crendon@bakerlaw.com

*Counsel for Defendants Endo Health Solutions
Inc. and Endo Pharmaceuticals Inc.; Par
Pharmaceutical, Inc., and Par Pharmaceutical
Companies, Inc.*

*Co-Liaison Counsel for the Manufacturer
Defendants*

/s/ Enu Mainigi
WILLIAMS & CONNOLLY LLP
Enu Mainigi
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com

Counsel for Defendant Cardinal Health, Inc.

*Co-Liaison Counsel for the Distributor
Defendants*

/s/ Shannon E. McClure

Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Telephone: (215) 851-8100
Fax: (215) 851-1420
smcclure@reedsmith.com

*Counsel for Distributor Defendant
AmerisourceBergen Drug Corporation*

*Co-Liaison Counsel for the Distributor
Defendants*

/s/ Geoffrey Hobart

Geoffrey Hobart
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: (202) 662-5281
ghobart@cov.com

*Counsel for Distributor Defendant
McKesson Corporation*

*Co-Liaison Counsel for the Distributor
Defendants*

/s/ Kaspar Stoffelmayr

Kaspar Stoffelmayr
BARTLIT BECK LLP
54 West Hubbard Street
Chicago, IL 60654
Telephone: (312) 494-4434
Fax: (312) 494-4440
kaspar.stoffelmayr@bartlitbeck.com

Counsel for the Walgreens Defendants

*Liaison Counsel for the Chain Pharmacy
Defendants*

CERTIFICATE OF SERVICE

I, Donna M. Welch, hereby certify that the foregoing document was served via the email consistent with the Court's order to all counsel of record.

/s/ Donna M. Welch
Donna M. Welch
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Tel: (312) 862-2000
donna.welch@kirkland.com